

ASSEMBLY BILL

No. 365

Introduced by Assembly Member Nation
(Coauthor: Senator O’Connell)

February 20, 2001

An act to amend Sections 45113, 45196, 45305, 88013, 88124, and 88196 of the Education Code, relating to public school employees.

LEGISLATIVE COUNSEL’S DIGEST

AB 365, as introduced, Nation. School employees: classified service.

(1) Existing law, which is applicable to school districts and community college districts that have not adopted the merit system, requires the governing board of each school district and community college district to prescribe written rules governing the personnel management of the classified service, whereby those employees are designated as permanent employees of the district after serving a prescribed probationary period not to exceed one year.

This bill would require a permanent employee who accepts a promotion and fails to complete the probationary period for the promotional position, to be employed in the classification from which he or she was promoted.

(2) Existing law specifies that any employee in the permanent classified services of a school district or community college district who has been promoted and who has not served the time designated as the probationary period for a class of employment may be demoted to the class from which promoted without recourse to an appeal or hearing by the personnel commission of the district, except as otherwise provided by rules of the commission, provided that the demotion does not result

in the separation of the employee from the permanent classified services.

This bill, instead, would require this employee to be employed in the classification from which he or she was promoted, provided that the employment does not result in the separation of employee from the permanent classified service.

(3) Existing law precludes the amount deducted from the salary of a school district or community college district classified employee due to absence on account of illness or accident for a period of 5 school months or less from exceeding the sum actually paid to a substitute employee employed to fill his or her position.

This bill would condition this provision on continued absence after the employee has exhausted all available sick leave. The bill would require that the 5-month period and the sick leave run consecutively and would limit an employee to one 5-month period per illness or accident. By requiring that school district or community college district to comply with these increased leave and differential pay provisions, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 45113 of the Education Code is
2 amended to read:
3 45113. The governing board of a school district shall
4 prescribe written rules and regulations, governing the personnel
5 management of the classified service, which shall be printed and
6 made available to employees in the classified service, the public,



1 and those concerned with the administration of this section,
2 whereby ~~such~~ *these* employees are designated as permanent
3 employees of the district after serving a prescribed period of
4 probation which shall not exceed one year. *A permanent employee*
5 *who accepts a promotion and fails to complete the probationary*
6 *period for that promotional position, shall be employed in the*
7 *position from which he or she was promoted.*

8 Any employee designated as a permanent employee shall be
9 subject to disciplinary action only for cause as prescribed by rule
10 or regulation of the governing board, but the governing board's
11 determination of the sufficiency of the cause for disciplinary
12 action shall be conclusive.

13 The governing board shall adopt rules of procedure for
14 disciplinary proceedings which shall contain a provision for
15 informing the employee by written notice of the specific charges
16 against him *or her*, a statement of ~~his~~ *the employee's* right to a
17 hearing on ~~such~~ *those* charges, and the time within which ~~such~~ *the*
18 hearing may be requested which shall be not less than five days
19 after service of the notice to the employee, and a card or paper, the
20 signing and filing of which shall constitute a demand for hearing,
21 and a denial of all charges. The burden of proof shall remain with
22 the governing board, and any rule or regulation to the contrary
23 shall be void.

24 No disciplinary action shall be taken for any cause which arose
25 prior to the employee's becoming permanent, nor for any cause
26 which arose more than two years preceding the date of the filing
27 of the notice of cause unless ~~such~~ *the* cause was concealed or not
28 disclosed by ~~such~~ *the* employee when it could be reasonably
29 assumed that the employee should have disclosed the facts to the
30 employing district.

31 This section shall apply only to districts not incorporating the
32 merit system as outlined in Article 6 (commencing with Section
33 45240) of this chapter.

34 SEC. 2. Section 45196 of the Education Code is amended to
35 read:

36 45196. (a) When a person employed in the classified service
37 ~~is~~ *has exhausted all available sick leave, including all*
38 *accumulated sick leave, and continues to be absent from his or her*
39 *duties on account of illness or accident for a an additional period*
40 ~~of not to exceed five months or less~~, whether or not the absence

1 arises out of or in the course of employment of the employee, the
2 amount deducted from the salary due him *or her* for any month in
3 which the absence occurs shall not exceed the sum which is
4 actually paid a substitute employee employed to fill his *or her*
5 position during his *or her* absence.

6 ~~Excepting~~

7 *(b) For purposes of subdivision (a), all of the following shall*
8 *apply:*

9 *(1) The sick leave, including accumulated sick leave, and the*
10 *five-month period shall run consecutively.*

11 *(2) An employee shall not be provided more than one*
12 *five-month period per illness or accident. However, if a school year*
13 *terminates before the five-month period is exhausted, the employee*
14 *may take the balance of the five-month period in a subsequent*
15 *school year.*

16 *(c) Except in a district the governing board of which has*
17 *adopted a salary schedule for substitute employees of the district,*
18 *the amount paid the substitute employee during any month shall*
19 *be less than the salary due the employee absent from his *or her**
20 *duties.*

21 ~~Entitlement~~

22 *(d) Entitlement to sick leave provisions under this section, if*
23 *any, shall be considered “entitlement to other sick leave” for the*
24 *purposes of computing benefits under the provisions of Section*
25 *45192 if the absence is for industrial accident or illness and shall*
26 *be used after entitlement to all regular sick leave, accumulated*
27 *compensating time, vacation or other available paid leave has been*
28 *exhausted.*

29 ~~The foregoing provisions~~

30 *(e) This section shall not apply to any school district ~~which~~ that*
31 *adopts and maintains in effect a rule ~~which~~ that provides that a*
32 *regular classified employee shall once a year be credited with a*
33 *total of not less than 100 working days of paid sick leave, including*
34 *days to which he *or she* is entitled under Section 45191. ~~Such~~*
35 *Those days of paid sick leave in addition to those required by*
36 *Section 45191 shall be compensated at not less than 50 percent of*
37 *the employee’s regular salary. The paid sick leave authorized*
38 *under ~~such~~ a rule of this type shall be exclusive of any other paid*
39 *leave, holidays, vacation, or compensating time to which the*

1 employee may be entitled. Nothing in this section shall preclude
2 the governing board from adopting ~~such~~ a rule *of this type*.

3 SEC. 3. Section 45305 of the Education Code is amended to
4 read:

5 45305. Any employee in the permanent classified service who
6 has been suspended, demoted, or dismissed may appeal to the
7 commission within 14 days after receipt of a copy of the written
8 charges by filing a written answer to the charges. Such an appeal
9 is not available to an employee who is not in the permanent
10 classified service except as provided by rules of the commission.
11 An employee in the permanent classified service who has not
12 served the time designated by the commission as probationary for
13 the class ~~may be demoted to the class from which promoted~~
14 ~~without recourse to an appeal or hearing by the commission,~~
15 ~~except as otherwise provided by rules of the commission; and~~
16 ~~shall be employed in the position from which he or she was~~
17 ~~promoted~~ provided, that ~~such demotion~~ the employment does not
18 result in the separation of the employee from the permanent
19 classified service. Nothing in this section shall operate to alter the
20 protections guaranteed under Section 45309.

21 SEC. 4. Section 88013 of the Education Code is amended to
22 read:

23 88013. The governing board of a community college district
24 shall prescribe written rules and regulations, governing the
25 personnel management of the classified service, which shall be
26 printed and made available to employees in the classified service,
27 the public, and those concerned with the administration of this
28 section, whereby these employees are, except as provided in
29 Section 72411, designated as permanent employees of the district
30 after serving a prescribed period of probation which shall not
31 exceed one year. *A permanent employee who accepts a promotion*
32 *and fails to complete the probationary period for that promotional*
33 *position, shall be employed in the position from which he or she*
34 *was promoted.*

35 Any employee designated as a permanent employee shall be
36 subject to disciplinary action only for cause as prescribed by rule
37 or regulation of the governing board, but the governing board's
38 determination of the sufficiency of the cause for disciplinary
39 action shall be conclusive.

1 The governing board shall adopt rules of procedure for
2 disciplinary proceedings which shall contain a provision for
3 informing the employee by written notice of the specific charges
4 against him or her, a statement of the employee's right to a hearing
5 on those charges, and the time within which the hearing may be
6 requested which shall be not less than five days after service of the
7 notice to the employee, and a card or paper, the signing and filing
8 of which shall constitute a demand for hearing, and a denial of all
9 charges. The burden of proof shall remain with the governing
10 board, and any rule or regulation to the contrary shall be void.

11 No disciplinary action shall be taken for any cause that arose
12 prior to the employee's becoming permanent, or for any cause that
13 arose more than two years preceding the date of the filing of the
14 notice of cause, unless the cause was concealed or not disclosed by
15 the employee when it could be reasonably assumed that the
16 employee should have disclosed the facts to the employing district.

17 This section shall apply only to districts not incorporating the
18 merit system as outlined in Article 3 (commencing with Section
19 88060).

20 SEC. 5. Section 88124 of the Education Code is amended to
21 read:

22 88124. Any employee in the permanent classified service who
23 has been suspended, demoted, or dismissed may appeal to the
24 commission within 14 days after receipt of a copy of the written
25 charges by filing a written answer to the charges. Such an appeal
26 is not available to an employee who is not in the permanent
27 classified service except as provided by rules of the commission.
28 An employee in the permanent classified service who has not
29 served the time designated by the commission as probationary for
30 the class ~~may be demoted to the class from which promoted~~
31 ~~without recourse to an appeal or hearing by the commission,~~
32 ~~except as otherwise provided by rules of the commission; and shall~~
33 *be employed in the position from which he or she was promoted,*
34 *provided, that such demotion the employment does not result in the*
35 *separation of the employee from the permanent classified service.*
36 Nothing in this section shall operate to alter the protections
37 guaranteed under Section 88128.

38 SEC. 6. Section 88196 of the Education Code is amended to
39 read:

88196. (a) When a person employed in the classified service ~~is~~ *has exhausted all available sick leave including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for a an additional period of not to exceed five months or less*, whether or not the absence arises out of or in the course of employment of the employee, the amount deducted from the salary due the employee for any month in which the absence occurs shall not exceed the sum which is actually paid a substitute employee employed to fill the employee's position during his or her absence.

Except

(b) *For purposes of subdivision (a), all of the following shall apply:*

(1) *The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.*

(2) *An employee shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.*

(c) *Except in a district where the governing board has adopted a salary schedule for substitute employees of the district, the amount paid the substitute employee during any month shall be less than the salary due the employee absent from the employee's duties.*

Entitlement

(d) *Entitlement to sick leave provisions under this section, if any, shall be considered "entitlement to other sick leave" for the purposes of computing benefits under Section 88192 if the absence is for industrial accident or illness and shall be used after entitlement to all regular sick leave, accumulated compensating time, vacation or other available paid leave has been exhausted.*

This

(e) *This section shall not apply to any community college district that adopts and maintains, in effect, a rule ~~which~~ that provides that a regular classified employee shall be credited once a year with a total of not less than 100 working days of paid sick leave, including days to which he or she is entitled under Section 88191. These days of paid sick leave, in addition to those required by Section 88191, shall be compensated at not less than 50 percent*

1 of the employee's regular salary. The paid sick leave authorized
2 under ~~such~~ a rule *of this type* shall be exclusive of any other paid
3 leave, holidays, vacation, or compensating time to which the
4 employee may be entitled. Nothing in this section shall preclude
5 the governing board from adopting ~~such~~ a rule *of this type*.

6 SEC. 7. Notwithstanding Section 17610 of the Government
7 Code, if the Commission on State Mandates determines that this
8 act contains costs mandated by the state, reimbursement to local
9 agencies and school districts for those costs shall be made pursuant
10 to Part 7 (commencing with Section 17500) of Division 4 of Title
11 2 of the Government Code. If the statewide cost of the claim for
12 reimbursement does not exceed one million dollars (\$1,000,000),
13 reimbursement shall be made from the State Mandates Claims
14 Fund.

